



AGENDA NO: C-1

MEETING DATE: November 18, 2015

Staff Report

TO: Public Works Advisory Board DATE: November 13, 2015
FROM: Janeen Burlingame - Management Analyst
SUBJECT: Discussion of Expanded Polystyrene Regulation

RECOMMENDATION

Staff recommends the Public Works Advisory Board (PWAB) review the staff report and provide comments to City Council as necessary.

FISCAL IMPACT

Other than staff time for continued public outreach and education, and the deferral of work on other Public Works activities, there would be no fiscal impact to the general fund should the draft ordinance be adopted by the City Council.

BACKBACKGROUND

At the September 8, 2015 City Council meeting, the Council discussed an informational memo prepared by the City Attorney regarding a possible ban on the use of certain expanded polystyrene (EPS) products (see Attachment 1). The Council approved a motion to support pursuing adoption of an ordinance banning the use of EPS food containers and the retail sale of EPS products, such as foam coolers and packing “peanuts,” within Morro Bay, including reaching out to affected businesses. Staff was directed to return with a draft ordinance for consideration.

DISCUSSION

Over 80 cities and counties in California have enacted regulations focused on restricting the use of food and drink containers made from EPS (commonly referred to as Styrofoam™) and some of those agencies have also prohibited the retail sale of most EPS products within their respective jurisdictions. Main reasons cited by for banning EPS: environmental impacts, potential health effects and potential for recycling opportunities to divert trash from the landfill.

EPS contains the toxic substances Styrene and Benzene which are suspected carcinogens and neurotoxins that are hazardous to humans. EPS food containers leach the toxin Styrene when coming in contact with warm food or drink, alcohol, oils and acidic foods causing human contamination and posing a health risk to people.

EPS is harmful to the environment because it is a durable material that is not biodegradable, taking several decades to hundreds of years to deteriorate in the environment or landfill. Its foam structure allows it to break down easily into smaller pieces, making it more difficult and expensive to remove from the environment. Due to the lightweight nature, floatability and prevalence of the material to be blown around even when properly disposed of, it travels easily through gutters and storm drains, eventually reaching the ocean. The material absorbs pollutants like sponges, picking up and

Prepared By: JB

Dept Review: RL

concentrating contaminants in the environment. As EPS litter moves through the environment, fish and wildlife mistake it as food and ingest the plastic. Several studies approximate that plastic products, including polystyrene, make up 80-90% of floating marine debris. During the beach cleanup at Morro Rock last year, 94 pounds of trash were collected with the most prevalent material collected being plastics and cigarette butts. Much of the plastic collected was polystyrene that is not recyclable.

What Other Cities Have Done

The City Attorney's informational memo noted the City of San Luis Obispo provided the City its work their staff prepared when SLO's City Council was considering adopting an ordinance regulating EPS. Several cities and counties who enacted EPS regulation were reviewed to determine the scope of regulations enacted, methods for implementation and enforcement and pages 4 through 7 of the informational memo in Attachment 1 outline the results of that review.

In July 2015, SLO City adopted an ordinance that included the following provisions:

- Prohibit use of EPS for prepared food; require food providers to use biodegradable, compostable, or recyclable food containers
- Prohibit vendors and event promoters from selling or otherwise providing EPS which is not wholly encased within a more durable material
- Exemption for "undue hardship" and a process for the City Manager to go through in determining whether to grant such exemption
- For food provider violating the code, a violation that would result in administrative fines with having the option for their first violation to pay for equivalent amounts of allowable alternatives in lieu of paying the fine
- For event promoter violating the code, a violation that would result in a fine with varying rates depending on the size of the event

Options for Banning EPS

At the September 8 Council meeting, the informational memo from the City Attorney provided several questions for Council to consider that would aid in determining what type of ordinance they would like to implement. After discussion, the Council chose to pursue an ordinance regulating the use of EPS with the following components:

- Include EPS food containers
- Include retail sale of EPS products (foam plates, foam coolers, packing peanuts, etc...)
- Include an "in lieu of fine" program
- Include an exception for "undue hardship"
- Seek input from affected businesses with a written survey

Draft Ordinance for Discussion

Staff feels the SLO City's ordinance achieves what the City Council desired given the parameters of what they wanted to include in the development of an ordinance for Morro Bay. Attachment 2 is draft ordinance language for consideration to enact.

Staff prepared an informational handout regarding Council's direction to pursue an ordinance prohibiting the use and sale of EPS food containers and products in the City (see Attachment 3). In addition, a survey was created to get input from affected businesses on the draft ordinance, including feedback on what an acceptable percentage of total cost increase would be used to qualify for an "undue hardship" exception (see Attachment 4). Both the informational handout and survey were mailed out in early November and an online survey was also created to make it easier for affected businesses to provide feedback to staff. At the writing of this staff report, staff had received 9 responses to the survey. Of those responding to the question of what food containers the business currently use, 75% responded other alternatives were used and 25% responded using EPS products.

Below are items regarding the proposed ordinance for further discussion and comment to the City Council.

- “Undue hardship” exemption: Council wanted to include an exemption whereby a business can apply for a one time exemption delaying the implementation of the ordinance requirement prohibiting the use of EPS food containers to give time to transition to non EPS food containers based on a certain percentage increase in cost. The SLO City ordinance, and several of the other cities and counties that included an affordability exclusion, used 15% as the threshold. It was unclear how this number was selected. In the survey sent to affected businesses, staff has asked what would be an acceptable percentage increase of operating costs to qualify for the exemption. Of those responding online to this question, 33.33% responded 10% or less, 33.33% responded 11-15% and 33.33% responded 26-30%. The one business who mailed in the survey, indicated 10-20%. An update of responses for additional surveys submitted after the writing of this staff report will be provided at the meeting.
- Inclusion of non-City sponsored special events: Council did not indicate at its September 8 meeting to include these events in the proposed ordinance; however, given the previous adoption of Resolution No. 10-08 to not use city funds by any department or agency of the City to purchase Styrofoam™ products and discourage the use of Styrofoam™ by private parties who use City facilities, and the Council’s recent direction to pursue an ordinance prohibiting the use of EPS food containers and the retail sale of EPS products, inclusion of non-City sponsored special events prohibiting the use of EPS food containers seemed logical.
- Effective date: Staff would recommend any adopted ordinance go into effect 6 months after its final passage that would allow time for notification and education to the affected businesses, including information on the “undue hardship” exemption and how to apply.

CONCLUSION

Staff recommends the PWAB review the staff report and provide comments to City Council as necessary.

Attachments:

1. September 8, 2015 City Council Staff Report
2. Draft ordinance regulating EPS food containers and products
3. Business information handout regarding EPS regulation
4. Business survey regarding EPS regulation


AGENDA NO: D-2
MEETING DATE: September 8, 2015

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 2, 2015

FROM: Rob Livick, PE/PLS - Public Works Director/City Engineer

SUBJECT: Consideration of an Ordinance Regulating Expanded Polystyrene (EPS) Food Containers and Products

RECOMMENDATION

Staff recommends the City Council review the informational memo prepared by the City Attorney regarding a potential ordinance regulating the use of certain EPS products and for the Council to provide any further direction, as necessary.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

Other than staff time for public outreach and education, and the deferral of work on other Public Works activities, there would be no fiscal impact as a result of this action.

DISCUSSION

As a result of public comment received during the June 23, 2015, City Council meeting, Councilperson Headding requested, and received Council support, for this issue to be placed on the agenda of a future Council meeting.

The City Attorney's office has prepared an informational memo based largely on work performed by City of San Luis Obispo staff in preparation for their ordinance that bans EPS, commonly known as the Dow Chemical trademarked brand name "Styrofoam."

Additionally, due to the concern over the use of limited fossil fuels in the production of plastic water bottles and Styrofoam (EPS) products and the concern those materials contribute significantly to the marine debris problem, on February 11, 2008, the Morro Bay City Council adopted Resolution No. 10-08 which stated in part:

01181.0001/267107.1

Prepared By: RL

Dept Review: RL

City Manager Review: SS - Acting

City Attorney Review: JWP

BE IT FURTHER RESOLVED that, except when required to maintain effectiveness of personnel and reduce the effects of heat stress and dehydration during highly physical exercises, extreme temperatures, and during emergency situations (e.g. fire, police, harbor, EOC, volunteers etc.), no city funds will be used by any department or agency of the City of Morro Bay to purchase single-serving bottles of water or styrofoam products; and

... no selling of nor distribution of plastic water bottles and styrofoam containers will occur at City-sponsored events at City-owned facilities; and

.... discourage the use of single-serving water bottles and styrofoam by private parties who use City facilities

The City has been a leader in the County in limiting its own use of EPS products. The question before the Council is: should that limitation extend to the community at-large as an ordinance banning the EPS products?

ATTACHMENT

1. Informational Memo Re: Possible Ban On Styrofoam (EPS)

INFORMATIONAL MEMO **RE POSSIBLE BAN ON STYROFOAM (EPS)**

I. INTRODUCTION

This memo provides an overview of the options available for passing an ordinance to ban expanded polystyrene (EPS), more commonly known as Styrofoam, within the City of Morro Bay (City). The following memo will summarize the various options and give examples of types of regulations passed in other cities. Before getting into the various options, the memo will briefly explain why cities have adopted such regulations. Input regarding those options is being sought before returning this matter to the Council for review and direction.

II. WHAT IS EPS? AND WHY DO CITIES WANT TO BAN IT?

EPS was invented in 1941 by Dow Chemical scientist Otis Ray McIntire . To make it, small beads of the polymer polystyrene are steamed with chemicals until they expanded to 50 times their original volume. After cooling and settling, the pre-expanded beads are then blown into a mold - such as that of a drink cup or cooler - and steamed again, expanding further, until the mold is completely filled and all of the beads have fused together. The finished product is a lightweight, inexpensive material that is about 95% air. The insulating properties and cheap manufacturing costs of EPS have made it a popular choice for businesses.

There are two major reasons why cities and counties are banning EPS: 1) It is harmful to the environment, especially the marine environment, and 2) It is likely unhealthy for human beings who use EPS for food and drink containers.

August 5, 2015
Page 2

A. Harmful to the Environment

EPS is harmful to the environment because it is a durable material that is not biodegradable. Its foam structure allows it to break down easily into smaller pieces, making it more difficult and expensive to remove from the environment. As EPS litter moves through the environment, fish and wildlife often mistake the pieces as food and ingest the plastic.

According to Douglas McCauley, a marine biology professor at the University of California, Santa Barbara, there are two main issues that polystyrene causes for marine animals - mechanical and chemical.

"The [mechanical root] is very straight-forward," said McCauley, "Oftentimes, we find polystyrene foam lodged in the intestines that causes blockages that can be lethal. If you think about how we worry about a mild blockage from eating the wrong thing, imagine eating a ball of Styrofoam. That's what some of these animals are doing."

Chemically, absorbent properties make EPS even more dangerous. "Polystyrene foams essentially act like little pollutant sponges, picking up and concentrating some of the nastiest contaminants in the ocean," McCauley says. "Then something like a sea turtle comes along and eats this thinking it is a jellyfish." "It is very worrisome to me that some of these plastic-feeding fish may be ending up back on our tables," says McCauley.

B. Harmful to Humans

In addition to the above, using food and drink containers made out of EPS is potentially harmful, because EPS is made of non-renewable petroleum products and manufactured with a monomer called Styrene, which may have adverse effects on human health. Styrene, a potentially

August 5, 2015
Page 3

carcinogenic chemical, has been shown to leach into food and drinks when heated or when coming into contact with hot foods.¹

In addition to the potential health effects, EPS is bad for us because it is not recyclable. Recently, New York City studied the feasibility of recycling EPS, and determined it was far too expensive and energy consumptive to be viable. The containers often used for food would need to be cleaned of oil and food debris before they could be transformed into something else. What recyclers are able to produce is not another batch of EPS, but a different plastic that may not have a market for its use. Joe Biernacki, professor of chemical engineering at Tennessee Tech University says, "You couldn't just take recycled Styrofoam cups and make molds again because it's already expanded."

In addition to all the energy needed to clean and melt down the EPS waste, the waste needs to be transported. This transportation is frustrating because this light material has a lot of volume to it, making it a bulky and expensive item to transport.

III. OPTIONS FOR BANNING EPS

The City has several options and choices to make in determining what type of ordinance the Council wants to implement. Below, the options are laid out in question form.

- Does the City want to ban food and drink containers at restaurants?
- Does the City want to prohibit the retail sale of any product that is made with EPS that is not wholly encapsulated or enclosed? That generally includes foam plates,

¹ Food and Chemical Toxicology, Volume 33, Issue 6, Pages 475–481 (1995). Available at: http://ac.els-cdn.com/027869159500009Q/1-s2.0-027869159500009Q-main.pdf?_tid=1d125fac-2177-11e4-ad09-00000aacb35d&acdnat=1407775800_19aeb4101043c117eb2842c55b96e237

August 5, 2015
Page 4

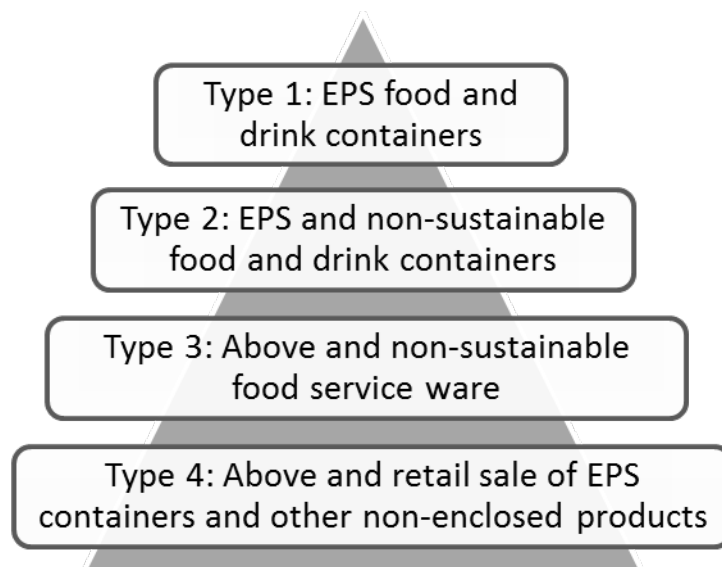
cups, packing “peanuts,” smaller foam ice coolers (those not clad in plastic), pool toys and other products that may not be directly associated with food service.

- Does the City want to ban all non-recyclable containers (not just EPS) in favor of recyclable, compostable, or biodegradable materials?
- Does the City want to favor any type of alternative, like cardboard or paper?
- Who does the City Council to act as the enforcer of whatever regulations are adopted?
- Will there be a fine? How much? (San Luis Obispo has a \$100 fine with an “in lieu of fine” program that allows the violator to buy \$100 of acceptable alternative product instead of paying the fine.)
- Does the City want to give a warning for the first offense and 30 days to resolve the violation?
- Does the City want to give the violator the option of buying acceptable product of the same amount the fine would have been?
- Does the City Council want to provide an exception for “undue hardship” because alternatives are either too costly or their container needs could not be met by alternatives? How is “undue hardship” to be defined?
- Does the City want to include an emergency clause to allow for use of whatever is banned for public health and safety or medical necessity?
- What would the timeframe be to gain compliance? (30 days to 1 year)

IV. WHAT OTHER HAVE CITIES DONE

The City of San Luis Obispo has provided us with the work their staff prepared when that City Council adopted an ordinance regulating EPS. Before adopting their ordinance, staff looked at several cities and determined there are 4 main types of EPS regulations. Below is a pyramid showing the 4 types, going from least regulation to the most.

August 5, 2015
Page 5



- **Type 1:** This type focuses only on EPS containers that hold food or drink. That would not include clear, rigid polystyrene food or drink containers. That would also not include any food-service ware items such as straws, cup lids, or utensils.
- **Type 2:** This second type is a restriction on EPS food and drink containers, as well as all other food containers that are non-recyclable, non-compostable or non-reusable. This would not include clear, rigid polystyrene containers as it recyclable in the County. This would also not include any items such as straws, cup lids, or utensils.
- **Type 3:** This third type is one that prohibits EPS food and drink containers, as well as all other food containers that are non-recyclable, non-compostable or non-reusable. In addition, this type includes restrictions on straws, cup lids, utensils and other similar products.
- **Type 4:** This fourth type includes all of the previously stated restrictions, but also prohibits the retail sale of any product that is made with EPS that is not wholly encapsulated or enclosed. That generally includes foam plates, cups, packing “peanuts,” smaller foam ice coolers (those not clad in plastic), pool toys and other products that may not be directly associated with food service.

The San Luis Obispo staff looked at 11 agencies, selected based on proximity, best practice ordinances or status as a benchmark city. The agencies included: Santa Cruz, Santa Monica, Capitola, Monterey, Carpinteria, Ojai, Salinas, Newport Beach, Cupertino, County of Monterey, and

August 5, 2015
Page 6

County of Santa Clara. Below is a summary of the conclusions they determined after looking at those agencies.

Most cities and counties focused on the environmental concerns of EPS food containers, as the basis for an ordinance including:

- EPS is a lightweight material that can be blown out of waste receptacles and into storm drains and waterways.
- EPS breaks down into small pieces, which allow it to spread easily through aquatic environments and is mistaken as food by fish and wildlife.
- EPS, in its broken down form, is difficult and expensive to clean up.
- EPS is generally not economically feasible to be recycled.

Most ordinances have several key elements including:

- Language expressly prohibiting the use of EPS food and drink containers provided by food providers.
- Specific definitions that exclude or include polystyrene food-service ware items such as straws, lids for cups, and utensils from the scope of the ordinance.
- An “undue hardship” clause providing exemptions for cases where alternatives were either too costly or their container needs could not be met by alternatives.
 - 15% often used as the threshold for determining an undue economic hardship. (Please note, such an exemption could swallow the ban because it is not unusual for alternatives to cost 15% more than EPS.)
- An exemption for packaging of uncooked food items, such as raw fish and meat.
- An exclusion of foods prepared or packaged outside the city and sold inside the city limits.
- Inclusion of an emergency clause for public health and safety or medical necessity.
- An implementation time frame after adoption, usually ranging from 30 days to one year.

Some cities and counties have additional elements which further specify the ordinance’s scope including:

- A section stating all non-recyclable containers are to be prohibited in favor of recyclable, compostable, or biodegradable materials.
- The addition of other products made of EPS. That includes items such as small coolers, pool toys, and packing “peanuts” for shipping.

August 5, 2015
Page 7

- An “in lieu of fine” program, where the proof of purchase of acceptable products is accepted instead of a fine for the first offense.
- Other considerations addressed by individual agencies include:
 - Capitola and Santa Cruz amended and expanded initial ordinances to include a wider range of items including the retail sale of polystyrene products.
 - Carpinteria has included that each food provider file a signed certification indicating they are aware of the ordinance and will comply with it. That is to be done at the beginning of each year.

The City of San Luis Obispo adopted a robust ordinance with the following provisions: prohibit use of EPS for prepared food; require food providers to use biodegradable, compostable, or recyclable food containers; prohibit vendors and event promoters from selling or otherwise providing EPS which is not wholly encased within a more durable material; definitions for many of the terms used in the added code section; exemptions and a process for the City Manager to go through in determining whether to grant such exemption; violations could result in administrative fines and food providers had the option for their first violation to pay for equivalent amounts of allowable alternatives in lieu of paying the fine; and a violation provision with varying rates depending on the size of the event where the event promoter violated this added code.

V. CONSIDERATIONS TO BE TAKEN INTO ACCOUNT WHEN CHOOSING THE VARIOUS OPTIONS FOR AN EPS BAN

A. Business Perspective

Food-based businesses are typically the group most affected by EPS ordinances. San Luis Obispo City staff worked with the Chamber of Commerce to contact several local food-based businesses to better understand their perspective on this issue. Initially, a small group of businesses were contacted directly to discuss the issues. Based on those conversations, a survey was developed that was sent to a larger group of businesses in the City. In total, feedback was received by 20 local businesses.

August 5, 2015
Page 8

The businesses were grouped into three categories for analysis.

- Group 1: Businesses that no longer use EPS food containers, but had in the past.
- Group 2: Businesses that have not used EPS food containers since the business began.
- Group 3: Businesses that currently use EPS food containers.

Businesses in Group 1 generally cited owner/management preference as the main reason for switching away from EPS food containers. Also, those businesses saw an approximate 15-60% increase in cost associated with switching to another product. Those businesses noted increased customer satisfaction, as well as increased consumer prices as the main effects of switching.

Group 2 businesses chose not to use EPS food containers for a variety of reasons, including owner/management preference, customer preference and environmental and health concerns.

Businesses in Group 3 generally use EPS food containers because it is less expensive than alternatives. Some businesses also indicated concerns with the performance of alternative containers. The concerns involve both the rigidity of the containers with hot foods or liquids and poor insulating properties. Concerns about an EPS ordinance from those businesses included increased costs and additional regulations on private business.

That outreach effort was intended to be illustrative and not exhaustive of the issues and concerns of the business community on this issue. If desired, then additional, in-depth outreach to the business community can be included as a part of the City Council direction on this issue. .

B. Cost Comparison

In 2012, the City of San Jose completed a cost comparison of EPS products to alternatives, as part of a county-wide effort to regulate EPS. The results of that analysis are below:

Material	Cups	Plates	Clamshell Container
EPS	\$0.035	\$0.056	\$0.09

August 5, 2015
Page 9

Rigid Plastic	\$0.026	\$0.083	\$0.25
Paper	\$0.055	\$0.02	\$0.28
Molded Natural Fiber	n/a	\$0.064	\$0.22
Compostable Plastic	\$0.07	\$0.15	\$0.33

Alternatives to EPS cups ranged from 26% less expensive to 50% more expensive. The range for plates was 35% less expensive to 63% more expensive for EPS alternatives. Alternatives to EPS clamshell containers ranged from 59% to 73% more expensive. Staff compared the results of the City of San Jose analysis to some local prices and found general concurrence with the findings.

C. Outcomes of Regulation

Classification of litter can be very time intensive and expensive. As a result, there is relatively little data on the outcomes of EPS ordinances. There are, however, some observational studies that have documented results. Those include:

- The City of Santa Cruz observed a 50% decrease in EPS food and drink containers picked up during annual beach and river cleanups between 2007-2012.
- One year after implementation of the City of San Francisco ordinance that prohibits EPS food and drink containers, the City's litter audit showed a 36% decrease in EPS litter.

August 5, 2015
Page 10

VI. CONCLUSION

If the City decides to pursue passing an ordinance that bans EPS, then there are several options the City will need to decide. To help with that process, please see the below table with focused questions to facilitate Council direction:

Questions for Council Direction		
	Yes	No
Pursue an ordinance regulating the use of EPS		
Include EPS food containers		
Include all non-recyclable, non-compostable, non-reusable food containers		
Include all non-recyclable, non-compostable, non-reusable food service ware (utensils, cup lids, straws, etc.)		
Include the retail sale of EPS products (coolers, packing “peanuts,” etc.)		
Include exception for undue hardship		
Include an “in lieu of fine” program		
Seek stakeholder input through a written survey		

Chapter 8.17

EXPANDED POLYSTYRENE

Sections:

8.17.010 Definitions.

8.17.020 Expanded polystyrene disposable food containers prohibited.

8.17.030 Required biodegradable, compostable, or recyclable disposable food containers.

8.17.040 Prohibited sales.

8.17.050 Exemptions.

8.17.060 Violations.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. “Affordable” means that a biodegradable, compostable or recyclable product may cost up to ___ percent (to be determined by the City Council) more than the purchase cost of comparable EPS alternatives.

B. “ASTM standard” means meeting the standards of the American Society for Testing and Materials (ASTM) international standard D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

C. “Biodegradable” means compostable (separately defined) or the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

D. “City facility” means any building, structure or vehicle owned and operated by the city of Morro Bay, its agents, agencies, and departments.

E. “City contractor” means any person or entity that enters into an agreement with the city to furnish products or services to or for the city.

F. “Compostable” means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch). Compostable disposable food containers must meet ASTM standards for compostable materials.

G. “Disposable food container” is interchangeable with “to go” packaging and “food packaging material” and means all containers that are used to hold prepared food or drinks. Disposable food containers include clamshells, bowls, plates, trays, cartons, boxes, and cups that are intended for single use, including, without limitation, food containers for takeout foods and/or leftovers from partially consumed meals prepared by food providers. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

H. “Events promoter” means an applicant for any event permit issued by the city or any city employee(s) responsible for any city-organized event.

I. “Expanded polystyrene” or EPS means blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Expanded polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes and packing peanuts.

J. “Expanded polystyrene products” means any item such as coolers, ice chests, cups, bowls, plates, clamshell containers, shipping boxes, or any other merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.

K. “Food provider” means any establishment located within the city that is a retailer of prepared food or beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.

L. “Person” means an individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.

M. “Prepared food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the city. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

N. “Recyclable” means any material that is specified in the franchise agreement with the city’s solid waste removal provider including, but not limited to, aluminum, tin and bi-metal cans, clear and colored glass containers, high density polyethylene (HDPE), polyethylene terephthalate (PET), clear or rigid polystyrene, corrugated cardboard and mixed paper.

O. “Vendor” means any store or business which sells or offers goods or merchandise, located or operating within the city of Morro Bay, including those referenced in the definition of “food provider.”

8.17.020 Expanded polystyrene disposable food containers prohibited.

A. Food providers within the city of Morro Bay may not provide prepared food in or provide separately any disposable food container made from expanded polystyrene, except as exempted in Section 8.17.050.

B. Disposable food containers made from expanded polystyrene are prohibited from use in all city facilities.

C. City contractors in the performance of city contracts and events promoters may not provide prepared food in disposable food containers made from expanded polystyrene.

8.17.030 Required biodegradable, compostable, or recyclable disposable food containers.

A. All food providers within the city utilizing disposable food containers shall use biodegradable, compostable or recyclable products.

B. All city facilities utilizing disposable food containers shall use biodegradable, compostable or recyclable products.

C. City contractors and events promoters utilizing disposable food containers shall use biodegradable, compostable, or recyclable products while performing under a city contract or permit.

8.17.040 Prohibited sales.

No vendor or events promoter in the city may sell or otherwise provide any expanded polystyrene product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 8.17.050. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

8.17.050 Exemptions.

A. The city manager or designee may exempt a food provider from the requirements set forth in Section 8.17.020(A) for a single, one-year period upon the food provider showing, in writing, that this chapter would create an undue hardship or practical difficulty as evidenced by no alternatives being available or such alternatives are not affordable. The city manager or designee shall put the decision to grant or deny a one-year exemption in writing, and the decision shall be final.

B. Exemptions to allow for the sale or provision of expanded polystyrene products may be granted by the city manager or designee, if the vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The city manager or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final.

C. An exemption application shall include all information necessary for the city manager or designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The city manager or designee may require the applicant to provide additional information.

D. The city manager or designee may approve the exemption application in whole or in part, with or without conditions.

E. Foods prepared or packaged outside the city and sold inside the city are exempt from the provisions of this chapter.

F. Raw meat, fish and other raw food trays are exempt from the provisions of this chapter.

G. Products made from expanded polystyrene which are wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic.

H. Construction products made from expanded polystyrene are exempted from this chapter if the products are used in compliance with Title 14, Buildings and Construction, and used in a manner preventing the expanded polystyrene from being released into the environment.

I. In a situation deemed by the city manager to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food providers, city contractors and vendors doing business with the city shall be exempt from the provisions of this chapter.

J. Expanded polystyrene packaging products which have been received from sources outside the city may be reused to be kept out of the waste stream.

8.17.060 Violations.

A. Any violation of the provisions of this chapter by any person is subject to administrative fines as provided in Chapter 1.03, which may be appealed pursuant to the procedures in that chapter.

B. For the first violation, the city manager or designee may allow the violating food provider, in lieu of payment of the administrative fine, to submit receipts demonstrating the purchase after the citation date of biodegradable, compostable, or recyclable products in an amount equal to the amount of the citation.

C. Food providers or vendors who violate this chapter in connection with city permitted special events shall be assessed fines as follows:

1. A fine not to exceed two hundred dollars for an event of one to two hundred persons.
2. A fine not to exceed four hundred dollars for an event of two hundred one to four hundred persons.
3. A fine not to exceed six hundred dollars for an event of four hundred one to six hundred persons.
4. A fine not to exceed one thousand dollars for an event of six hundred or more persons.

B. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.



Expanded Polystyrene Regulation



On September 8, 2015 the City Council directed staff to develop an ordinance to bring back for consideration regulating the use and sale of expanded polystyrene (also called EPS, white plastic foam, or commonly referred to as Styrofoam™) food containers and products in the City. The ordinance would help to protect the City's natural environment and decrease the amount of waste sent to landfills. The City Council will discuss the proposed ordinance at its December 8, 2015 meeting.

REQUIREMENTS FOR AFFECTED BUSINESSES

For restaurants and food providers:

The proposed ordinance would prohibit restaurants and food providers in the City from using EPS food and drink containers and require that a recyclable, compostable or biodegradable product be used instead. Acceptable alternative products include uncoated paper, coated paper, cardboard, aluminum foil, compostable or "bio-products" and other non-foam, plastic containers with the "chasing arrow" symbol numbers 1-7.

For grocery stores and other retailers:

The proposed ordinance would prohibit the retail sale of any EPS product such as disposable foam coolers, cups, plates, bowls and packing peanuts except as exempted.

EXEMPTIONS

Exemptions are provided for certain products including:

- Foam trays for uncooked meats.
- Food prepared or packaged outside of the City.
- Packing materials which have been collected for reuse.
- Products that contain EPS, but are encased in a more durable material (e.g. rigid plastic covered foam coolers).

In addition, Council will consider adding to the ordinance the ability for food providers to apply for a one time, one year exemption from the ordinance if alternative products are unaffordable or unavailable.

COST COMPARISON

In 2012, the City of San Jose performed a comparison of typical costs of EPS products to alternatives as part of a county-wide effort to regulate EPS, the results of which are outlined below.

Material	Cups	Plates	Clamshell Container
EPS	\$0.035	\$0.056	\$0.09
Rigid Plastic	\$0.026	\$0.083	\$0.25
Paper	\$0.055	\$0.020	\$0.28
Molded Natural Fiber	n/a	\$0.064	\$0.22
Compostable Plastic	\$0.07	\$0.15	\$0.33

Alternatives for cups ranged from 26% less expensive to 50% more expensive. The range for plates was 35% less expensive to 63% more expensive for EPS alternatives. Alternatives to EPS clamshell containers ranged from 59% to 73% more expensive. Morro Bay staff found general concurrence to pricing with San Jose City's analysis in a recent review done in 2015.

Please visit www.morro-bay.ca.us/eps to review the proposed ordinance the City Council will discuss at its December 8, 2015 meeting.



FAQ

What is Expanded Polystyrene (EPS)?

Expanded Polystyrene is a white, plastic foam commonly used for disposable food and drink containers such as cups, plates and clamshell containers. EPS is also used to make disposable foam coolers and packing peanuts for shipping.

Why is EPS now regulated?

EPS products are commonly only used once and are not recyclable. When discarded, EPS can be blown from trash receptacles and disposal sites. EPS breaks easily into smaller pieces, does not biodegrade, and can be ingested by wildlife. EPS comprises 15% of the litter found in storm drains and is the second most common type of litter on California beaches.

What makes food containers biodegradable, compostable or recyclable?

“Biodegradable” means a product or package will completely break down and return to nature; decomposing into natural elements within a reasonably short period of time.

“Compostable” means a product or package will break down into, or become part of, usable compost (such as mulch) in an appropriate composting program or facility.

“Recyclable” means a product can be recycled as part of the City’s Recycling Program, including uncoated paper, coated paper, cardboard, aluminum foil and other non-foam, plastic containers with the “chasing arrow” symbol numbers 1–7.

What are the alternatives to EPS?

Alternative products include: uncoated paper, coated paper, cardboard, aluminum foil, compostable or “bio-products” and other non-foam, plastic containers with the “chasing arrow” symbol numbers 1–7. Please consult with your packaging supplier for the alternative that is right for your business.

To whom would the proposed ordinance apply?

All businesses in the City of Morro Bay including: restaurants, bars & pubs, cafeterias, caterers & event organizers, convenience & liquor stores, delis & coffee shops, ice cream & yogurt shops, mobile food vendors, grocery & drug stores, or retail outlets. City-approved special events within the City of Morro Bay must also comply with the proposed ordinance.

Are there exemptions?

Council will consider including an “undue hardship” exemption if alternatives are not readily available or because the alternatives are not affordable (more than a certain percentage increase in total operating cost). If added to the proposed ordinance, these exemptions would apply to the first year of the ordinance only.

There are also standing exemptions for foam trays for uncooked meats, foods prepared or packaged outside the city, packing materials which have been collected for reuse and products that contain EPS, but are encased in a more durable material (e.g. rigid plastic covered foam coolers).

How can I provide input on the proposed ordinance?

The City created the attached survey that will help get input from businesses about the proposed ordinance, including what percentage of total operating cost increase should be considered for an “undue hardship” exemption. Please **return the survey by November 20** to Janeen Burlingame at City Hall, 595 Harbor St. You can also take the survey online at <https://www.surveymonkey.com/r/mbeps>.

In addition, the Public Works Advisory Board will discuss the proposed ordinance at its November 18 meeting and the City Council will discuss the proposed ordinance at its December 8 meeting. Public comments can be provided at both meetings.

Business Name: _____

Contact Name: _____

Phone Number: _____

1. Does your business currently use polystyrene/Styrofoam™ or other alternatives such as recyclable, compostable or reusable food or drink containers?

☐ Polystyrene/Styrofoam™
 ☐ Other alternatives
2. If using polystyrene or Styrofoam™, what are your main reasons for using these products for food or drink containers?

☐ Less expensive than alternatives
 ☐ Alternative products do not meet needs

☐ No interest in switching
3. If using other alternatives, what was your main reason for switching to another product?

☐ Owner/Management preference
 ☐ Customer preference

☐ Environmental concerns
 ☐ Health concerns
4. What was the approximate percentage increase in total operating costs associated with switching?

☐ No increase
 ☐ 10% or less
 ☐ 10-20%
 ☐ 20-30%
 ☐ 30-40%
 ☐ 40-50%

☐ 50-60-%
 ☐ 60-70%
 ☐ 70-80%
 ☐ 80-90%
 ☐ 90-100%
 ☐ More than 100%
5. Has the change had any positive or negative effects on your business?

☐ Positive
 ☐ Negative

Please describe _____

6. Does your business use recyclable, compostable or reusable food service ware (utensils, cup lids, straws)?

☐ Yes
 ☐ No
7. If no to Question 6, what are your main reasons for using non-recyclable, non-compostable or reusable food service ware?

☐ Less expensive than alternatives
 ☐ Alternative products do not meet needs

☐ No interest in switching
8. If yes to Question 6, what was your main reason for switching to recyclable, compostable or reusable food service ware?

☐ Owner/Management preference
 ☐ Customer preference

☐ Environmental concerns
 ☐ Health concerns
9. If yes to Question 6, what was the approximate percentage increase in total operating costs associated with switching?

☐ No increase
 ☐ 10% or less
 ☐ 10-20%
 ☐ 20-30%
 ☐ 30-40%
 ☐ 40-50%

☐ 50-60-%
 ☐ 60-70%
 ☐ 70-80%
 ☐ 80-90%
 ☐ 90-100%
 ☐ More than 100%
10. Should the City Council adopt an ordinance prohibiting the use of polystyrene or Styrofoam™ food or drink containers and include an exception for undue hardship delaying implementation of the prohibition, what would be an acceptable percentage increase in overall operating costs to qualify for the hardship?

11. What concerns would you have should the proposed ordinance be passed prohibiting the use of polystyrene or Styrofoam™ for food or drink containers?

Please return survey by November 20 to Janeen Burlingame, Management Analyst, at City Hall, 595 Harbor St.
 Thank you for your participation and input regarding the proposed expanded polystyrene regulation.